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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. SAMUEL E. ARCHULETA, Defendant and Appellant.	A148188 (Alameda County Super. Ct. No. C177078)

Defendant and appellant Samuel E. Archuleta contends the trial court erred in admitting evidence of prior sex offenses during his trial on a charge of rape. We affirm.

PROCEDURAL BACKGROUND

In September 2015, appellant was charged by information with forcible rape (Pen. Code, § 261, subd. (a)(2)); the information also alleged 10 prior felony convictions. A jury found appellant guilty of forcible rape. Appellant admitted to three prior strike convictions, and the remaining prior conviction allegations were dismissed. The trial court sentenced appellant to 35 years to life in prison. This appeal followed.

FACTUAL BACKGROUND

The Victim's Testimony

On the evening of August 28–29, 2015, Jane Doe was working as a prostitute on International Boulevard in Oakland. At about midnight, appellant approached her in a white SUV. Appellant's dog was in the vehicle as well. Jane Doe got in the car and asked appellant if he wanted a "date." They agreed appellant would pay her $60 for sex.

Appellant drove towards a nearby location specified by Jane Doe but then kept driving, saying he saw police officers in the vicinity. As they continued to drive, Jane Doe asked to be taken back, but appellant said, "I'll just go in the park, just go in the park and we can handle business." Appellant parked and paid Jane Doe. He then pulled out a stun gun, although Jane Doe referred to it as a Taser. Appellant held the stun gun to Jane Doe's side and told her to return his money and get in the rear of the vehicle. There was a mattress in the rear. Appellant joined Jane Doe in the back; she asked him to put on a condom but he refused. Appellant penetrated Jane Doe's vagina with his penis. The vaginal intercourse continued for approximately 10 minutes; the stun gun was in appellant's hand.

A police officer arrived and Jane Doe yelled out, "he's raping me, and he got a [Taser]." Jane Doe's statement was captured on the police officer's body camera. Appellant hid the stun gun in the car, exited the vehicle, and was placed in handcuffs. Police found three $20 bills in appellant's pants and a stun gun in the vehicle. Jane Doe told a hospital sexual examiner she had been threatened with a Taser.

Appellant's Testimony

Appellant testified he lives in his truck, which is why he has a mattress in the back. He admitted he has numerous prior convictions, including for rape, burglary, receiving stolen property, furnishing marijuana to a minor, assault with a deadly weapon, and failure to register as a sex offender.

On the evening of the alleged rape, Jane Doe waved appellant down and offered him a "date." He offered her half an ounce of marijuana in exchange for sex, and Jane Doe accepted. She directed him to drive to park. Appellant parked and they climbed in the back of the car and began to have intercourse. Soon after, a police officer arrived. Jane Doe said, "I'm going to jail. I need some money." She threatened to "holler rape;" appellant responded, "do what you got to do." He does not know where the stun gun found in his car came from.

The Prior Acts Testimony

Christye Doe testified she was working as a prostitute on International Boulevard in Oakland the evening of August 14, 2015. Appellant pulled up in a "truck-van," Christye got into the vehicle, and they negotiated a price for sex. There was a dog in the car and a bed in the rear. Instead of driving to the location Christye specified, appellant parked in a dark location that made Christye feel uncomfortable. They climbed into the back of the vehicle and appellant said, "Do you know what a stun gun is?" She could not see anything because it was dark, but she felt something she understood to be a stun gun. Christye asked appellant to use a condom, but he refused. Appellant penetrated Christye's vagina with his penis; he was holding the stun gun close to her head. He stopped after five minutes and let Christye get out of the car. Christye went to the hospital the next day and the police took a statement. She told the police she did not "want to go forward with any sort of prosecution." At trial, appellant testified he had never seen Christye before. A police inspector testified Christye picked appellant out in a photo lineup.

Jeanne Doe testified that appellant offered her marijuana and a ride on an evening in July 1982, when she was 15 years old. Appellant refused to let her out at the bowling alley she was going to and she eventually jumped out of the car, resulting in permanent loss of use of her left arm. At trial, appellant testified Jeanne jumped out of the car because she was slapped by another woman who was also in the car.

Monique Doe testified that on an afternoon in July 1982, when she was fifteen years old, she accepted a ride from appellant and smoked marijuana he offered her. The marijuana had a strong chemical smell and Monique lost consciousness. She woke up hours later on the ground outside the vehicle; she was naked and appellant was "raping" her. A police officer arrived but then left after speaking to appellant; Monique was struggling to stay awake. Appellant moved her to a more secluded location and continued to rape her in his car. A second police officer arrived and arrested appellant. At trial, appellant testified he was convicted of "a rape with drugs" in 1982. He

suggested Monique had willingly consumed "PCP," but he admitted he "took advantage" of her.

Annmarie Doe testified that, on an evening in December 2003, she and a friend accepted appellant's offer to accompany him to smoke marijuana. They were 13 and 14 years old at the time. Appellant drove them into the Oakland Hills. Annmarie felt "really funny" after she smoked appellant's marijuana, like she was "flying on a cloud." Shortly thereafter, appellant grabbed one of Annmarie's friend's breasts and tried to "go in her pants." The girls fought back and appellant threatened to hurt them. He also offered to pay them for sex. The police arrived and arrested appellant. At trial, appellant testified he was convicted of furnishing marijuana to a minor.

DISCUSSION

Before trial, the prosecution moved to introduce evidence of appellant's prior sexual offenses pursuant to Evidence Code sections 1108 and 1101, subdivision (b).[1] The trial court ruled the evidence regarding appellant's conduct in relation to Jeanne Doe and Monique Doe in 1982, Annmarie Doe in 2003, and Christye Doe in August 2015 were admissible under section 1108, to show propensity to commit sex crimes, and section 1101, subdivision (b), to show lack of mistake as to consent. Appellant contends the trial court erred. We conclude the trial court did not abuse its discretion in admitting the testimony of Christye Doe under section 1108. We need not address the admissibility of the remainder of the testimony because, in light of Christye's testimony, any error in admitting the other testimony was harmless.

"The rules governing the admissibility of evidence of other crimes are well settled. Although evidence of prior criminal acts generally is inadmissible to show bad character, criminal disposition, or probability of guilt, such evidence may be admissible when relevant to prove some material fact other than the defendant's general disposition to commit such an act. ([] § 1101, subd. (b).) 'As [] section 1101, subdivision (b) recognizes, that a defendant previously committed a similar crime can be circumstantial

[1] All undesignated statutory references are to the Evidence Code.

evidence tending to prove his identity, intent, and motive in the present crime. Like other circumstantial evidence, admissibility depends on the materiality of the fact sought to be proved, the tendency of the prior crime to prove the material fact, and the existence *vel non* of some other rule requiring exclusion.' [Citation.] An exception to the general rule against admitting propensity evidence is [] section 1108, subdivision (a), which provides for the admissibility of evidence of other sexual offenses in the prosecution for a sexual offense, subject to [] section 352." (*People v. Jones* (2012) 54 Cal.4th 1, 49.) "[T]he Legislature's principal justification for adopting section 1108 was a practical one: By their very nature, sex crimes are usually committed in seclusion without third party witnesses or substantial corroborating evidence. The ensuing trial often presents conflicting versions of the event and requires the trier of fact to make difficult credibility determinations. Section 1108 provides the trier of fact in a sex offense case the opportunity to learn of the defendant's possible disposition to commit sex crimes." (*People v. Falsetta* (1999) 21 Cal.4th 903, 915 (*Falsetta*).) We review the trial court's decision to admit evidence under section 1108 for an abuse of discretion. (*People v. Loy* (2011) 52 Cal.4th 46, 61 (*Loy*).)

Section 1108, subdivision (a) provides, "In a criminal action in which the defendant is accused of a sexual offense, evidence of the defendant's commission of another sexual offense or offenses is not made inadmissible by Section 1101, if the evidence is not inadmissible pursuant to Section 352." Appellant does not dispute that Christye Doe's testimony constituted evidence of his commission of another sexual offense within the meaning of section 1108 (see *id.*, subd. (d)(1)), but he contends the trial court abused its discretion in failing to exclude the testimony under section 352.[2] That section gives the court discretion to exclude evidence "if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue

[2] Appellant also contends section 1108 is unconstitutional, but he concedes his claims were rejected by the Supreme Court in *Falsetta*, *supra*, 21 Cal.4th 903. We are obligated to follow *Falsetta*. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455; see also *Loy*, *supra*, 52 Cal.4th at pp. 60–61.)

consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." (§ 352.) In applying section 352 to evidence offered under section 1108, "[t]he evidence is presumed admissible and is to be excluded only if its prejudicial effect substantially outweighs its probative value in showing the defendant's disposition to commit the charged sex offense or other relevant matters." (*People v. Cordova* (2015) 62 Cal.4th 104, 132.)

In *Falsetta*, the Supreme Court explained, "By reason of section 1108, trial courts may no longer deem 'propensity' evidence unduly prejudicial per se, but must engage in a careful weighing process under section 352. Rather than admit or exclude every sex offense a defendant commits, trial judges must consider such factors as its nature, relevance, and possible remoteness, the degree of certainty of its commission and the likelihood of confusing, misleading, or distracting the jurors from their main inquiry, its similarity to the charged offense, its likely prejudicial impact on the jurors, the burden on the defendant in defending against the uncharged offense, and the availability of less prejudicial alternatives to its outright admission, such as admitting some but not all of the defendant's other sex offenses, or excluding irrelevant though inflammatory details surrounding the offense." (*Falsetta*, *supra*, 21 Cal.4th at pp. 916–917.)

It is clear the trial court did not abuse its discretion in admitting Christye Doe's testimony. As *Falsetta* explained, "the probative value of 'other crimes' evidence is increased by the relative similarity between the charged and uncharged offenses, the close proximity in time of the offenses, and the independent sources of evidence (the victims) in each offense." (*Falsetta, supra*, 21 Cal.4th at p. 917.) The rape Christye described was practically identical to the rape Jane Doe described: In both instances, it was claimed that appellant approached a prostitute on International Boulevard in Oakland, drove her to an isolated location, threatened her with a stun gun, refused to wear a condom, and raped her in the back of his car. Christye's rape occurred just over two weeks before Jane Doe's rape. And appellant points to nothing in the record suggesting the two women were connected; that is, Christye's testimony is an independent source.

Appellant argues in general terms that "[i]t is well-settled that evidence of prior offenses is extremely prejudicial." He makes a reasonable argument that the testimony of Jeanne, Monique, and Annemarie Doe was particularly likely to be prejudicial, because it suggested appellant is a child molester who targets teenage girls and because the jury heard about Jeanne's permanent injury. However, appellant points to nothing particularly inflammatory in Christye Doe's testimony. " 'The prejudice which exclusion of evidence under [section 352] is designed to avoid is not the prejudice or damage to a defense that naturally flows from relevant, highly probative evidence.' [Citations.] 'Rather, the statute uses the word in its etymological sense of "prejudging" a person or cause on the basis of extraneous factors.' " (*People v. Zapien* (1993) 4 Cal.4th 929, 958.) Given that what allegedly happened to Christye is essentially identical to what allegedly happened to Jane Doe, there is little basis to conclude the evidence risked undue prejudice. The trial court did not err in admitting the testimony.

In light of the remoteness of the offenses involving Jeanne, Monique, and Annemarie Doe, and the more inflammatory nature of their testimony, it is a closer question whether the trial court should have excluded the evidence of the 1982 and 2003 acts under section 352. But we need not resolve that issue. Christye Doe's testimony was very powerful corroboration for Jane Doe's account. Indeed, it is difficult to imagine more powerful corroboration. Therefore, even though the testimony about appellant's older offenses was quite inflammatory, it is not reasonably probable the testimony from Jeanne, Monique, or Annmarie Doe had any impact on the jury's verdict alone or cumulatively. (*People v. Marks* (2003) 31 Cal.4th 197, 226–227; *People v. Mullens* (2004) 119 Cal.App.4th 648, 659.)[3]

[3] Appellant points out that, after Jeanne Doe's testimony, a juror asked, "[I]f we are to judge the case on evidence regarding the case, why are these prior incidents allowed?" The trial court responded, "The answer is that this evidence is allowed only for limited purposes. When I give the instructions, I will inform you what those limited purposes are. So when you consider the evidence, you may only consider the evidence for those purposes, not for any other purpose." Appellant suggests the juror's question shows the jury "was concerned about the fairness of admission of the evidence of the uncharged

DISPOSITION

The trial court's judgment is affirmed.

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conduct." Assuming that is so, it does not demonstrate prejudice. If anything, it suggests the jury was serious about its obligation to properly determine appellant's guilt of the charged offense and was not inclined to convict him as retribution for his past conduct. Moreover, appellant does not contend the trial court's instructions were inadequate.

SIMONS, J.

We concur.

JONES, P.J.

NEEDHAM, J.